IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 21325 of 2007(L)

LAR.216/1996 of ADDL.SUB COURT,KOLLAM

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PETITIONER:

P.RAMACHANDRAN, ASHLY NIVAS,
THEKKUMPURAM, PUTHOOR P.O.,
KOTTARAKKARA, KOLLAM.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
KOLLAM.

BY GOVT. PLEADER SRI.M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Petitioner's Exhibits

Ext.P1: A true copy of the judgment dated 8-10-1998 in LAR No.216/1996 passed by the Additional Sub-court Kollam

Ext.P2: A true copy of the order dated 17-06-1999 in I.A. 2841/1998 in LAR No. 216/1996 passed by the Additional Sub-Court, Kollam

Ext.P3: A true copy of the order dated 28-2-1996 in I.A. No. 1842/1999 in LAR No. 216/1996 passed by the Additional Sub-court Kollam

Ext.P4: A true copy of the order dated 25-5-2007 in I.A. No. 1681/2004 and IA No. 1682/2004 in LAR No. 216/1996 passed by the Additional Sub Court, Kollam

Ext.P5: A true copy of the judgment dated 2-1-2007 in W.P(C) No. 30331/2006 by this Hon'ble Court.

//True copy//

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K.PADMANABHAN NAIR, J.

W.P.(C) No. 21325 of 2007

Dated this the 12th day of July 2007

JUDGMENT

Government Pleader takes notice. The writ petition is heard and disposed of as agreed to by both parties.

2. Petitioners are the claimants in L.A.R. No. 216/1996. The case was posted for evidence to 8-10-1998. On that day they were absent. The reference was dismissed for default. Petitioners filed I.A. 2841/1998 for restoration of the reference. That application was also happened to be dismissed for non-prosecution on 17-6-1999. Thereafter the petitioner filed I.A. 1842/1999 for restoring the reference. A conditional order was passed. That condition was not complied with by the petitioners So that application was also dismissed on 28-2-2001.

3. I.A. 2841/1998 was filed by the petitioners for restoration of the reference application. In fact the only respondent in that application was State. Instead of serving a copy of the application on the Government Pleader and disposing of that application the Court below ordered notice. That application was dismissed on account of failure on the part of the petitioner to take steps.

4. After a lapse of three years the petitioner filed two applications (I.A 1681/2004 & 1682/2004), one for reviewing the order dated 28-2-2001 and another for condoning the delay of 1168 days under Section 5 of the Limitation Act. Both applications were dismissed. Challenging those orders this writ petition is filed.

5. The petitioner was the owner in possession of 13 Ares and 8 Sq.meters of land. The same was acquired for a public purpose. Dissatisfied with the quantum of compensation awarded the petitioner filed a petition under Section 18 of the Act to refer the matter to the Sub court for considering his claim for enhancement. The matter was referred to the Subordinate Judge's Court for determining the claim of enhancement of the petitioner. That L.AR. was dismissed for default by the learned Sub-judge. It is trite law that a reference application cannot be dismissed for default, even if the parties are absent. The court is bound to consider the claim on its merits as held by the Supreme Court in **Khazan Singh Vs. Union of India (2002 (1) KLT 644 (SC))** So the Court below should have restored the matter.

6. It is admitted that petitioners filed a petition for restoration of the L.A.R. That is allowed on condition of payment of cost. The petitioner did not comply with that condition. Thereafter there was long silence for three years. The petitioner filed a petition for review of the order, dismissing the I.A and also for condonation of delay. Those applications were dismissed. The orders passed by the court below dismissing I.A. 1681/2004 and 1682/2004 cannot be held to be illegal or perverse. But considering the initial illegality committed by the Sub-court I am of the view that it is only just and proper that the petitioner be given an opportunity to contest the matter on merits. I do not propose to award any cost. So the

order passed by the court below in I.A. 1681/2004 and 1682/2004 and also the order passed in I.A No. 1842/2004 are to be set aside.

7. In the result, the Writ Petition is allowed. The order passed by the court below dismissing I.A 1681/2004 and 1682/2004 are hereby set aside.I.A 1681/2004 and 1682/2004 are allowed. The order passed by the court below dismissing I.A. 1842/99 is reviewed. The direction to pay the cost is set aside. The L.A.R. 216/1996 is restored to file. But on account of the inordinate delay caused on account of the fault of the petitioner , I am of the view that they are not entitled to get interest for the period from 17-6-1999 till 25-5-2005. But I make it clear that they are entitled to get all the statutory benefits till 17-6-1999 and from 25-05-2007.

8. In the result, the writ petition is allowed as stated above. The learned sub-judge is directed to restore L.A.R. 216/1996 back to file and dispose of the same afresh in accordance with law after giving reasonable opportunity to both sides to adduce evidence . Being an old matter the sub-judge shall make every endevour to dispose of the L.A.R. without as expeditiously as possible.

K.PADMANABHAN NAIR,JUDGE

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